

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19016
[REDACTED]	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 13, 2005, the Revenue Operations Division of the Idaho State Tax Commission denied a request [Redacted] (petitioner) for refund of Idaho individual income tax of \$150 for tax year 2001.

The petitioner filed a timely protest and petition for redetermination of the refund denial in a letter dated September 4, 2005. The petitioner did not request a hearing. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The petitioner filed his 2001 Idaho individual income tax return on June 24, 2005. The return reflected a refund due to the petitioner. A letter was mailed to the petitioner advising him that his refund was denied because the time to claim the refund had expired. The petitioner protested the denial of his refund claim.

A Notice of Deficiency Determination was mailed to the petitioner to allow him an opportunity to appeal the Tax Commission's decision to deny the refund. The petitioner's file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3072(c) provides for a limit on the time allowed to claim a refund.

63-3072. Credits and refunds. . . .

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid.

Idaho Code § 63-3024A defines the credit and the time allowed to apply for a refund:

63-3024A. Credits and refunds. -- (a) Any resident individual not entitled to the credit allowed in subsection (b)(1), who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of twenty dollars (\$20.00) for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code if such deduction is claimed on the taxpayer's Idaho income tax return, and if the individual for whom the deduction is claimed is a resident of the state of Idaho. If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer . . .

(g) An application for any refund which is due and payable under the provisions of this section must be filed with the state tax commission within three (3) years of:

(i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or

(ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return. (Emphasis added.)

The petitioner in his letter of protest stated in part:

It is clear (and acknowledged by the figures noted in the letter) that taxes were paid in excess of those owed based on income earned. Had the situation been reversed and tax been owed for this return, the Idaho State Tax Commission would certainly expect payment of tax due along with a penalty for late payment as well as interest on the outstanding balance.

Idaho Code provides for a limit on the time the Tax Commission has to notify a taxpayer of a determination of tax due as follows:

**63-3068. Period of limitations for issuing a notice of deficiency and collection of tax.** (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the

**return was filed, whichever is later.**

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) **In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.**  
(Emphasis added.)

A three-year time restriction is placed on the Tax Commission for the notification of an underpayment of tax, just as a three-year time restriction is placed on a taxpayer for claiming a credit or refund of any overpayment of tax. When a taxpayer does not file a return as required by law, no time restriction for determining and collecting tax due is placed on the Tax Commission.

The Tax Commission did not receive the petitioner's 2001 Idaho income tax return until June 24, 2005, and the return was due on April 15, 2002. The period of limitation with respect to claiming a refund or credit of taxes shown in the return expired on April 15, 2005.

The Tax Commission finds Idaho Code section 63-3072(c) and section 63-3024A(g), cited above, are controlling. The clear statutory language prohibits credit or refund of taxes if the claim is not made within a certain timeframe. No credit or refund will be issued.

WHEREFORE, the Notice of Deficiency Determination [Redacted], dated September 13, 2005, that denies the petitioner a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.